

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-208445.2

DATE: June 27, 1983

MATTER OF: N.D. Lea & Associates, Inc.--
Reconsideration

DIGEST:

Prior decision holding that contract awardee did not have a conflict of interest is affirmed.

N.D. Lea & Associates, Inc. (N.D. Lea), requests reconsideration of our decision in N.D. Lea & Associates, Inc., B-208445, February 1, 1983, 83-1 CPD 110, involving N.D. Lea's protest of the award of a sole-source contract to Louis T. Klauder and Associates (Klauder) by the Department of Transportation, Urban Mass Transit Administration (UMTA), for the assessment of UMTA's rail standardization program.

We found that N.D. Lea was not an interested party to protest because it was not eligible for award of the contract due to an inherent conflict of interest--the contract was for the evaluation of work in which N.D. Lea had been heavily involved.

N.D. Lea essentially admitted this conflict, but argued that Klauder had a similar conflict of interest. We did consider that portion of N.D. Lea's protest because we found that if Klauder had a conflict of interest, but was being considered for award, then N.D. Lea should likewise be considered for award notwithstanding its conflict of interest. Additionally, N.D. Lea would then be an interested party for the remainder of its protest.

We found that Klauder did not have such a conflict of interest because it was not evaluating its own work and

because the work that it had done drafting railcar specifications that was related to the subject of the contract was only peripherally related and was a small amount of Klauder's overall business.

N.D. Lea now contends that our decision whether Klauder had a conflict of interest failed to consider another contract performed by Klauder that involved rail standardization. N.D. Lea alleges that Klauder's performance as a subcontractor to a joint venture on a contract for drafting standardized railcar specifications is work that would be reviewed under the present contract. Consequently, according to N.D. Lea, Klauder has a conflict of interest similar to N.D. Lea's.

N.D. Lea is correct in its assertion that our decision did not specifically address that contract. The thrust of N.D. Lea's arguments concerning Klauder's alleged conflict was that because Klauder wrote individual railcar specifications, it would be biased against the standardization program and would be predisposed to give the program a negative review. That was also the central point of UMTA's response, of Klauder's rebuttal, and of the discussion in our decision.

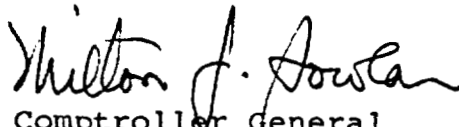
The contract referred to by N.D. Lea does not change the outcome of our decision. As we stated in the prior decision, the responsibility for determining whether a firm has a conflict of interest and to what extent the firm should be excluded from competition rests with the procuring agency and we will overturn such a determination only when it is shown to be unreasonable. Tymshare, Inc., B-198020, October 10, 1980, 80-2 CPD 267. UMTA determined that serving as a subcontractor on one contract was not an involvement in the rail standardization program significant enough to justify barring Klauder from reviewing the program. According to Klauder, that subcontract work was performed in 1977 and Klauder has not performed work on the program since that time.

We find that UMTA's determination was not unreasonable because Klauder's involvement in the program appears minimal. In addition, this argument by N.D. Lea is inconsistent with its argument that Klauder would be biased against rail standardization. The purpose of barring a firm that has been heavily involved in the standardization program from reviewing the program is that the firm might be predisposed

to view its own work and standardization in general positively, both for enhancement of its reputation and to ensure continuation of the program and, thus, further work for itself. Therefore, in light of N.D. Lea's primary argument that Klauder is biased against rail standardization, its argument that Klauder has a conflict because it participated in a rail standardization contract is not consistent.

Additionally, in connection with another issue, N.D. Lea has argued that the two firms that were engaged in the joint venture to which Klauder was the subcontractor should have been permitted to compete for the protested contract. This underscores the lack of merit in N.D. Lea's argument concerning Klauder's alleged conflict. It is illogical to argue that the subcontractor has a conflict of interest, but the prime contractors do not. Finally, N.D. Lea alludes to an alleged disagreement between Klauder and its prime contractors on that contract and implies that this alleged disagreement might somehow bias Klauder. We find this to be conjecture and of no weight in determining whether Klauder has a conflict of interest.

We affirm our prior decision.

for 
Comptroller General
of the United States